IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1026 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as toJJJJ : NO

JJJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Heard learned advocate Shri P.V. Nanavaty for the appellant and learned advocate Shri Mehul Shah appearing on caveat for respondents Nos. 1 & 2. Respondents Nos. 3 & 4 are the driver and owner respectively and as their presence is not required at this stage, learned advocate Shri Nanavaty is permitted to delete them so far as these proceedings are concerned.

2. In this appeal, the award dated 17.11.2000 passed below Ex. 22 in M.A.C.P. No. 657/96 has been challenged. The award has been passed on an application which was filed under the provisions of sec. 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

3. By virtue of the award, a sum of Rs. 2,04,500/- has been awarded to respondents Nos. 1 & 2, who are claimants in M.A.C.P. No. 657/96. The said amount has been awarded on the basis that the deceased girl was earning Rs. 15,000/- p.a. The petition was filed because respondent NO. 1 had lost her minor daughter Kum. Liluben Kamabhai on 27.8.1995 in a motor accident. After hearing the concerned advocates and upon perusal of the affidavits filed before the Tribunal, the Tribunal had awarded a sum of Rs. 2,04,500/- and had directed that 80% of the said amount should be given to respondent No. 1, who is the mother of late Kum. Liluben Kamabhai and 20% to respondent No. 2, the brother of late Kum. Liluben Kamabhai. Out of the amount awarded, it has been further directed that 35% of the amount should be paid by cheque to the respondents claimants whereas 65% of the amount should be deposited with a nationalised bank for a particular period. Being aggrieved by the said award, this appeal has been filed by the appellant insurance company.

4. Learned advocate Shri Nanavaty appearing for the appellant insurance company has submitted that the Tribunal has erred in awarding such a huge amount in respect of death of minor girl Kum. Liluben Kamabhai. According to the learned advocate, the child who had expired was hardly 15 years old and was not literate. There was no sufficient evidence with regard to income of the deceased. The Tribunal mainly relied upon a certificate of Sarpanch of the village where the deceased girl was staying for the purpose of determining income of the deceased. In the circumstances, it has been submitted for the appellant that the award is on a much

higher side. It has been further submitted by him that it would be difficult for the appellant insurance company to recover the amount which might be given to the claimants-respondents if ultimately in M.A.C.P. No. 657/96 lesser amount is awarded to the claimants.

5. On the other hand, learned advocate Shri Mehul Shah appearing for the claimants, who are respondents Nos. 1 and 2 herein, has submitted that the amount of compensation which has been awarded to the claimants is as per the Schedule. One can very well presume that a young girl who is doing labour work can earn approximately Rs. 1500 per month and, therefore, while determining the amount of compensation, no error has been committed by the Tribunal and, therefore, the appeal deserves to be dismissed.

6. We have heard the learned advocates at length. Upon perusal of the award and after hearing the concerned advocates, we are of the view that the award requires some modification. Learned advocate Shri Shah appearing for the claimants has submitted that the claimants are ready and willing to file an undertaking before the Tribunal that they would not withdraw M.A.C.P. No. 657/96 or shall not permit the said petition to be dismissed for default and they shall extend co-operation to the Tribunal so that the said petition can be finally disposed of as soon as possible.

7. In view of the fact that the claimants are prepared to give an undertaking to the Tribunal, it is directed that the claimants shall give an undertaking to the Tribunal within 4 weeks from today that they shall neither withdraw MACP No. 657/96 nor shall they permit the said petition to be dismissed for any default.

8. In view of the fact that only 35% of the amount awarded is to be paid to the claimants at this stage, no harm would be caused to the appellant insurance company even if lesser amount is finally awarded because 65% of the amount awarded is directed to be deposited with a nationalised bank.

9. Looking to the facts of the case, it is directed that 65% of the amount which is not to be disbursed in favour of the claimants at present shall be invested with any nationalised bank for a period of 5 years in the names of the claimants and Nazir of the Tribunal and the interest which might accrue on the amount deposited with the bank should be permitted to be withdrawn by the claimants. Possession of the Fixed Deposit Receipts

shall remain with the Nazir of the court and no amount shall be permitted to be borrowed on the security of the said FDRs.

10. The appellant shall deposit the remaining amount with the Tribunal within four weeks from today and a sum of Rs. 25,000/- which has been deposited with this court shall be transmitted to the Tribunal immediately.

11. In view of the above directions, the appeal is allowed to the above extent. The impugned award passed in M.A.C.P. No. 657/96 dated 17.11.2000 is modified accordingly.

(A.R. Dave, J.)

(J.R. Vora, J.)

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